

REMARKS

Claims 1-8, 39-54 are currently pending in the subject application and are presently under consideration. Claims 40, 42 and 47, have been amended herein to correct minor informalities, and claims 50 and 52 have been amended to further emphasize various distinguishing features. In addition, claims 55-58 have been newly added to highlight particular features. Applicant's representative notes that neither these amendments nor the newly added claims constitute new subject matter, but rather are related to aspects previously presented as claimed subject matter (*see e.g.*, claims 3, 4, 41, and 42). Accordingly, entry of these amendments does not necessitate further search or any undue effort on behalf of the Examiner. A version of the claims showing changes made can be found at pages 2-7 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Election/Restrictions of Claims 52 and 53

At page 2 of the Office Action (dated September 28, 2006), the Examiner has withdrawn from consideration claims 52 and 53 on the grounds that the aforementioned claims are directed to an independent invention. The Examiner states that the claims recite "displaying seller criteria and reporting," and incorrectly argues that these features would entail a different species if they have not been previously presented. However, the same species of invention has been previously presented. For example, independent claim 1 recites, "each of *the plurality of deals* includes *at least one seller criteria*" and "*outputting* a list of deals in real time from amongst *the plurality of deals...*" (*e.g.*, displaying seller criteria). In addition, independent claim 1 further recites, "*notifying* the seller of the particular product or service when the buying criteria does not match the seller criteria" (*e.g.*, reporting). Thus, applicant's representative believes that the features of claims 52 and 53 noted by the Examiner would not entail a new species, and respectfully requests that this restriction be withdrawn.

II. Rejection of Claims 1-8, and 39-54 Under 35 U.S.C. §103(a)

Claims 1-8, and 39-54 stand rejected under 35 U.S.C. §103(a) as being

unpatentable over Nelson, US 6,496,568. Withdrawal of this rejection is respectfully requested for at least the following reasons. Nelson fails to disclose, teach or suggest each and every feature set forth in the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

The claimed subject matter relates, *inter alia*, to a multiple criterion buying and selling model that can correlate criteria defined by a buyer with the criteria defined by the sellers. The model can allow certain selling/buying criteria to be pre-selected prior to negotiating (*e.g.*, price, quality, warranty). The model can also allow the buyer or seller to enter offering/ordering criteria, which can be a value or range for the selling/buying criteria (*see e.g.*, 8, line 27 – pg. 9, line 4; FIGS 4a-b). Thus, rather than waiting for sellers to determine if they can meet all buying criteria, deals that match in terms of offering/ordering criteria can be output in real time, and sellers can be informed of buying criteria that does not match their own seller criteria. For example, the sellers of a particular good or service can define a set of minimum inputs and other criteria (*see* page 11, lines 4-7; page 16, lines 15-21; Fig. 8b, element 303), while the buyers can enter criteria that is important to them, of which the sellers may not have listed in their own criteria, or even be aware it would be of interest to buyers (*see* page 2, lines 24-25). Hence, the model can inform sellers of buyers' input criteria that the sellers did not list as their own criteria (*see* page 11, lines 13-15), and output deals in real time based upon the

same or other criteria. In particular independent claim 1 (and similarly independent claims 40, 47, 50, 51, 52) recites, “**notifying the seller** of the particular product or service **when the buying criteria does not match the seller criteria.**” Nelson does not teach or suggest these features.

Rather, Nelson, which relates to generating notifications when an airline flight has been cancelled, fails to teach or suggest all the claimed features. In particular, Nelson discloses that a Customer Message Manager (CMM) that makes a determination of which events (*e.g.*, flight cancellation) require **customer** notification (*see* pg. 3, ll. 54-57), and which customers it is appropriate to notify (*see* pg. 4, ll. 7-10). The CMM then **notifies the customer**. It is readily apparent that *notifying the customer* is materially distinct from *notifying the seller*, as is recited in the subject claims. Moreover, the subject claims also indicate that the seller can be notified “**when the buying criteria does not match the seller criteria.**” In contrast, Nelson is silent as to this feature and in fact teaches customers (not the seller) can be notified when a flight is cancelled, which is neither buying criteria nor seller criteria for a list of deals offered by an airline.

To further distinguish, at pages 2-3 of the Office Action, the Examiner indicates that price and non-price criteria of the instant claims are analogous to time of flight, seat selection, or other criteria of the airline database 130. Assuming *arguendo* this is so, Nelson does not teach or suggest that notifications are generated when these criteria do not match buyer criteria. If these criteria do not match, then the buyer can agree to them anyway or choose another flight (*e.g.*, deal with different criteria). That is, the time of flight, seat selection, or other data that the airline offered and the customer accepted never result in a notification event. Rather, the notifications only occur based upon new criteria or at the very least when the agreed upon criteria for the deal *changes after the deal was accepted*.

What is disclosed in Nelson, is an entirely different concept than the claimed subject matter. Nelson teaches notifying the **buyer** when **new and/or different** post-deal criteria emerges. In contrast, the claimed subject matter can notify the **seller** of **buyer criteria** (*e.g.*, as it exists prior to the deal). Dependent claim 54 amply illustrates the differences in scope and spirit, reciting, “the at least one seller criteria is determined **prior to** receiving the buying criteria.” For Nelson to read upon this aspect is tantamount to

suggesting that the airline knows a flight will be canceled prior to receiving the buying criteria, but sells the ticket to the buyer anyway, only to later notify the buyer that the flight has been canceled. Such an approach would be illogical and further is neither taught nor suggested by Nelson. As previously stated, Nelson also fails to notify the *seller*; but instead notifies the buyer; and it would not be obvious to do so, as it is the seller itself (*e.g.*, the airline) who determines and issues the notifications according to the reference. Accordingly, this rejection of independent claims 1, 40, 47, 50, 51, and 52, as well as all claims that depend there from, should be withdrawn.

In addition, the Examiner takes official notice that “airline tickets frequently incorporate a distribution aspect to the selling of tickets.” (*see* Office Action, pg. 3). Applicant’s representative respectfully traverses the aforementioned well known statement as overly broad and/or not capable of instant and unquestionable demonstration of being well known. Accordingly, it is requested that the Examiner cite a reference in support of this position pursuant to MPEP §2144.03 if the rejection of the claim is to be maintained.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 (GEDP106US).

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP

/David W. Grillo/

David W. Grillo

Reg. No. 52,970

AMIN, TUROCY & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731